

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TIMOTHY L. BEALS,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-15-922-C
)	
SCOTT JAY, et al.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff filed the present action pursuant to 42 U.S.C. § 1983. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this matter was referred to United States Magistrate Judge Shon T. Erwin. Judge Erwin entered a Report and Recommendation (“R&R”) on May 19, 2017, recommending judgment be entered as to certain claims and that others be dismissed without prejudice. Plaintiff has objected to the R&R.

In the R&R, Judge Erwin sets out the history of this case. In summary, Plaintiff filed his action alleging violation of his constitutional rights. According to Plaintiff, Defendants illegally restricted his incoming and outgoing mail. The present R&R addresses Plaintiff’s claims against Defendants Scott Jay and Diana Bilbo and Defendant Beckham County. Judge Erwin recommends entry of Judgment in favor of Defendants Jay and Bilbo and dismissal without prejudice of Defendant Beckham County. Judge Erwin found that Plaintiff failed to exhaust his claims against Defendants Jay and Bilbo and that the claim against Beckham County fails as it attempts to impose liability under the doctrine of respondeat superior.

Plaintiff raises both procedural and substantive objections. Procedurally, Plaintiff argues that he was not informed of the process to properly respond to the Motion. Additionally, Plaintiff asserts that Defendant's Motion violates LCvR7.1 and/or Fed. R. Civ. P. 12(g) in that it improperly joins two Motions.¹ Neither objection has merit. Plaintiff filed a proper Objection to the Motion for Summary Judgment and to the R&R. The R&R's recommended disposition is not based on some failure of Plaintiff to provide a legal or factual rebuttal to the Motion. Rather, the determinations by Judge Erwin are based on operation of law and facts, which are undisputed. Finally, filing the Motion in the alternative, as was done here, does not implicate the improper joinder of Motions prohibited by LCvR7.1 or Fed. R. Civ. P. 12(g).

Plaintiff's substantive objections fare no better. Plaintiff argues either he did exhaust the administrative remedies because all Defendants were aware of his complaints, or he was unable to properly exhaust because of the actions of Defendants. However, Plaintiff fails to support either position with anything other than conclusory statements. As Judge Erwin noted, the administrative record demonstrates that Plaintiff only partially completed the administrative review process. Thus, his claims cannot proceed. See Jernigan v. Stuchell, 304 F.3d 1030, 1032 (10th Cir. 2002) ("An inmate who begins the grievance process but does not complete it is barred from pursuing a § 1983 claim under

¹ The Motion is entitled "Defendants Scott Jay and Diana Bilbo's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment."

PLRA for failure to exhaust his administrative remedies.”). Defendants Jay and Bilbo’s Motion for Summary Judgment will be granted.

Plaintiff does not dispute that Defendant Beckham County should be dismissed without prejudice.

Finally, because Plaintiff has responded to the Report and Recommendation, his request for additional time will be denied as moot.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 84). For the reasons set forth in the R&R and this Order, judgment will be entered in favor of Defendants Jay and Bilbo and their Motion for Summary Judgment (Dkt. No. 57) is GRANTED. Beckham County is DISMISSED without prejudice. Plaintiff’s Motion for Additional Time to File Objection to the Report and Recommendation (Dkt. No. 86) is DENIED as moot. As all issues have now been resolved, a judgment will issue.

IT IS SO ORDERED this 29th day of June 2017.


ROBIN J. CAUTHRON
United States District Judge